

**IADC MID-YEAR MEETING 2025  
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**A RETROSPECTIVE VIEW OF THE IMPACT  
OF THE MUSIC MODERNIZATION ACT**

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## **A Retrospective View of the Music Modernization Act**

Over five years have elapsed since the historic Music Modernization Act (“MMA”) became law. The MMA revised the following sections of the U.S. Code: 17 U.S.C. 101, 106, 114, 115, 801, 803, and 804; 19 U.S.C. 58c; 28 U.S.C. 137; and 47 U.S.C. 230. Congress passed the MMA with the hope of addressing multiple copyright-related issues in the music industry exacerbated by the surge in digital streaming platforms. Namely, the law sought to create a better system for administration of blanket mechanical licenses for digital streaming platforms such as Spotify, Pandora, Apple Music, or SoundCloud, and improve the ability of songwriters and publishers to collect the royalties for their work, and provide a more equitable way to compensate songwriters and publishers than the rate system in place at the time. The law represents a compromise between the competing stakeholders in the music industry: the digital streaming platforms and the songwriters and publishers.

In 2023, members of the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet, convened a meeting to discuss the impact of the MMA. The Subcommittee invited representatives from all aspects of the music industry including the digital streaming platforms, songwriters, and publishers, as well as representatives of the Mechanical Licensing Collective (MLC), which was a system created by the MMA to administer blanket mechanical licenses, collect and distribute mechanical licensing royalties through the development of a reliable database matching the songs with the rights holders. The purpose of the meeting was to discuss the aspects of the law that are working, and the aspects of the law that may need to be amended or improved.

Each of the industry representatives stressed their gratitude for the passage of the MMA. By all accounts, this law made significant improvements in the way songwriters and publishers are paid for their creative works when they are streamed on these digital platforms, and digital platforms agreed that the law has improved their ability to match songs with rightsholders and to pay royalties to the proper parties. While both sides agree that the MMA has resulted in significant improvements, opinions on what is working, and what is not, diverges based upon the interest of the party. Below, this article analyzes the effectiveness of the MMA compared to its stated goals.

### **Changes Implemented by the MMA and the Purpose of that Change:**

- Creation of the MLC to develop a more efficient process for streamlining the licensing of musical works for the benefit of streaming platforms and ensure that songwriters and composers receive compensation when digital services use their works.
- A revised system for rate setting to allow for a more equitable process designed to give songwriters the ability to petition for greater compensation.
- Ensuring that legacy artists with pre-1972 works receive compensation from digital service providers.
- For the first time in history, the law extends copyright protection to engineers, producers, and mixers who contribute to the song to recognize their important contributions to the creation of music.

- Limiting the liability of digital service providers for unpaid royalties if they follow the procedures outlined by the MMA to avoid costly copyright infringement litigation.

### **The MLC and the New Process for Licensing Musical Works:**

The MLC has now been fully operational for nearly three years. 28,000 members of the music industry enrolled, most of whom are independent publishers and administrators, and self-administered songwriters. A key to the success of the MLC has been the launch of a free, publicly available performance rights data reconciliation engine known as SONGVIEW. The MLC is overseen by publishers and self-publishing songwriters to ensure the accuracy of the database, and the appropriate distribution of the royalties. It is easily searchable, is based upon data from ASCAP and BMI (the performing rights organizations that represent most artists, songwriters, composers, and publishers (PROs), which is considered the most comprehensive information available, providing the necessary transparency to all. This database claims to contain over 90% of U.S. music. It is now considered by the industry to be an authoritative source as to ownership rights. The database contains ownership information for more than 31,000,000 musical works. Songwriters and publishers can access the database, provide updated information regarding rights to the songs, and can add their works with the goal of maintaining a reliable and definitive source for the rights to musical works. Since the creation of the MLC, the MLC has distributed more than \$1 billion in royalties. This record is expected to improve as more songwriters and publishers embrace the process.

There is no doubt that the former licensing and compensation system needed to change for both the digital streaming platforms and the musicians and publishers. The old system was difficult to navigate, leaving artists and publishers without the transparency to know if their works were played, and thus, limited their ability to collect the royalties they were owed. Without a central source that definitively established the rights to songs, the digital streaming platforms had difficulty calculating the royalties and determining who was entitled to receive those royalties. This often led to the platforms holding millions of dollars in royalties from songwriters and producers for fear of paying royalties to the wrong parties.

The new system was intended to make it easier for both sides. The database of ownership rights created by the MLC gave the songwriters and publishers the opportunity to submit claims to their songs, which is publicly available, so that they can monitor their works, and their entitlement to royalties. Conversely, this database was intended to give the digital service providers the ability to obtain blanket mechanical licenses for the reproduction and distribution of musical works, streamlining the process of licensing, and to determine who is owed the royalties and limiting their liability when those royalties are paid according to the ownership in the database, with the goal of releasing more of the royalties to the songwriters and publishers rather than have it remain in limbo. The database was intended to create more certainty for both sides.

While the MLC has made major strides in improving the accountability of digital streaming platforms for the royalties owed, the songwriters and publishers complain that the platforms continue to hold millions of dollars in unmatched royalties. They believe the MLC should be more diligent in matching songs to the rights holders to reduce the royalties that the platforms are holding. Publishers complain that the MLC relies on rightsholders to come forward and make a claim to a song when the MLC was created to do this job. Their reasoning is that this approach

favors the large publishing companies, when many of the smaller rightsholders do not know how to navigate the system, or their rights have transferred to their heirs and the heirs do not know of their right to royalties. On the other hand, the platforms complain that Congress and the Copyright Office need to exercise oversight by continuing to provide funding, and passing regulations to implement the MLC, and provide clear direction when there is a dispute as to the interpretation of rules and regulations. Not surprisingly, the platforms complain that the MLC favors the songwriters and publishers in disputes regarding the interpretation of rules and regulations, and the platforms believe the MLC should be more neutral in such matters.

All stakeholders agree that the MMA has vastly improved the ability of songwriters and publishers to receive the compensation they are entitled to when their songs are streamed. As with any new system, it is not perfect, but the MMA has delivered the more efficient process that it promised for both sides.

### **The New Rate Setting Process:**

Songwriters and publishers feel strongly that the new rate-setting system is far more equitable under the MMA than it was before. Since 1909, the Copyright Act allowed anyone to seek a compulsory license to reproduce a song in exchange for paying a statutory royalty rate, which was historically below market rates. Previously, the rate judges could not consider negotiated royalty rates that the song had commanded in the open marketplace. The changes include the selection of the judges who decide the rate issues, but also the evidence that the songwriters and publishers can present, which leads to a more holistic view of the value of the song, and the appropriate royalty rates. The primary goal of this provision of the MMA was to increase the compensation that songwriters and publishers receive for their creative works. While the system is not perfect, it has created a more level playing field for the creators. As one would expect, the digital platforms complain that this has resulted in them paying more for the songs than they should have to pay. Not surprisingly, the PROs (BMI, ASCAP, SESAC, etc.) assert that their members have long been underpaid, and continue to be underpaid for the value their creative works bring to the world.

If measured by the stated goal of this provision of the MMA, it has moved the needle in favor of higher royalty rates for artists, songwriters, and publishers.

### **Compensation for Pre-1972 Works:**

Prior to the MMA, federal copyright law did not protect sound recordings made before February 15, 1972. As just one example, the original songwriter of “Soul Man,” received no royalties when the originally recorded song was played because it was written before 1972, but the cover by John Belushi and Dan Akroyd, required the payment of royalties because it was released in 1978. The MMA closed this loophole by providing copyright protection to recordings made before 1972 until February 15, 2067. This change resulted in a brightline rule that artists whose works were created prior to 1972 are now entitled to compensation. This portion of the law accomplished its stated purpose.

### **Copyright Protection for those who Contribute to the Song:**

For the first time in history, the MMA amended the Copyright Act to provide for the distribution of royalties to a “producer, mixer, or sound engineer who was part of the creative process that

created the sound recording.” They are essential to the creation of music. Before the MMA, these professionals could not recover royalties for their contributions to the musical works, despite their valuable contributions. The law now allows them to share in the royalties for their contributions.

### **Limitation of Liability for Digital Service Providers:**

The MMA had widespread support from numerous music industry groups as well as the digital streaming media platforms because it was intended to bring order to a chaotic and often unworkable system that left them exposed to litigation over unpaid royalties. Without a central database tracking the rightful copyright owners, these streaming services could not always find and pay the royalties to the correct entities. Conversely, without an authoritative source for such rights, the platforms were withholding millions of dollars in royalties from the artists and publishers that earned those royalties. In 2021, the MLC announced that they had over \$400 million in unmatched royalties. The MMA solved this dilemma for the platforms by creating a system that limits their liability if they follow the procedures outlined by the MMA, reducing the number of lawsuits over unpaid royalties, and giving the copyright owners a method for obtaining release of their royalties. The songwriters and publishers argue that the limitation of liability incentivizes the platforms to withhold royalties for longer periods of time, claiming they are unmatched royalties, without fear of reprisal. They argue that there should be limits on their immunity if they withhold royalties that could easily be matched with minimal effort. This intended result of this provision has had the desired effect of reducing litigation over copyright issues, but more work remains to be done.

### **Conclusion**

The MMA was intended to protect multiple segments of the music industry. It attempts to bring order to the chaotic system previously in place through greater transparency, streamlined processes, and the creation of a reliable and authoritative source for copyright owner information. It assists the PROs in securing higher rates for songwriters and composers than the prior system allowed. It closes the copyright loophole for songs recorded prior to 1972 and gives copyright protection to studio producers and engineers to the extent they contributed to a creative work. It also protects the digital service providers from litigation over unpaid royalties. The biggest winners are the fans who can now enjoy access to more music on more platforms, knowing that the industry is moving toward a more equitable system of compensating the artists, songwriters, and publishers, who are the backbone of the music industry.